

REMARKS

Applicants' reply of February 5, 2008, was in response to the Restriction Requirement of October 24, 2007. In that reply, Applicants elected Group III, Claims 27-35, without traverse. Also, Applicants elected the species [8,(4-diethylamino-1-methyl-butylamino)-2,3-diphenyl-pyrido[2,3-b]pyrazine-6-yl]-carbamic acid ethyl ester (*i.e.*, SRI-3072).

It was pointed out in the current Office Communication that Applicants' elected species did not meet all of the limitations of the independent claim in Applicants' elected Group III. That is, the Examiner alleged that Claim 27 did not provide for the substituents S₃ and S₄ forming a fused ring, as in the elected species.

Original Claim 27 recited that substituents S₃ and S₄ could be, *inter alia*, organic radicals of from 1-26 carbon atoms. It is respectfully submitted that the definition of "organic radicals" at page 16, line 21, to page 17, line 6, would be understood by the skilled artisan to include a fused ring system. This is especially true given the substructures of Formulae II, IIa, IIb, IIb', IIc, IId, IId', IIe, IIe', IIg, as well as the specific species shown throughout the specification, including Tables 3, 4, and 8, which all illustrate fused ring systems. Thus, the skilled artisan would have understood that general Formula I includes fused ring systems and interpreted the recitation of S₃ and S₄ being an organic radical in Claim 27 accordingly.

In any event, Applicants have amended Claim 27 so that inclusion of fused ring systems is readily apparent. That is, Claim 27 has been amended to recite that:

- S₂ is a halogen, amino, hydroxy, or an organic radical comprising 1 to 26 carbon atoms selected from alkyl, alkoxy, monosubstituted amino, or disubstituted amino;
- S₃ and S₄
- (i) are independent substituents that can be independently selected from a halogen, amino, hydroxy, or an organic radical comprising 1-26 carbon atoms, or
 - (ii) **together form a heteroaryl or heterocyclic radical comprising 5, 6, or 7 ring atoms, optionally substituted with 1, 2, or three ring substituents selected from halogen, amino, or organic radicals comprising 1 to 12 carbon atoms. (Emphasis added)**

Verbatim support for this amendment can be found in original Claim 12, which was presented in the as-filed application. However, original Claim 12 contained a typographical error where S₂ was defined twice—once in subpart b) and again with S₃ in subpart c). Claim 12

should have defined S_2 in subpart b) and S_3 and S_4 (not S_2 again) in subpart c). This error would have been readily apparent and has been corrected in amended Claim 27.

No new matter has been added by this amendment; therefore, examination is requested on the claims as amended herewith. Claims 1-42 are pending and Claims 1-26 and 36-42 are withdrawn from consideration.

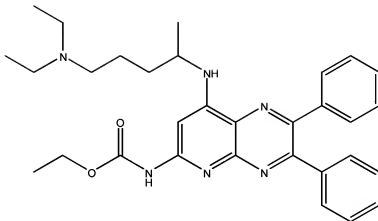
Response to Restriction Requirement:

To again summarize Applicants' elections made in their previous reply, **Applicants elect Group III, Claims 27-35**, without traverse.

The Examiner also identified numerous species categories (*i.e.*, A through O). Since Applicant elected Group III, the Examiner required an election of species in each of the following categories:

- I. Only one chemical structure with substitutions to said chemical structure as listed in Claim 27;
- J. Only one Group of bacteria among Gram positive or Gram negative bacterium listed in Claims 28 and 30;
- K. Only one bacterial genus, species, subspecies, strain, and sub-strain as listed in Claim 29 or 31; and
- L. Only one permeability enhancer among those listed in Claims 32-35; and

For species category I, Applicants elect the species [8,(4-diethylamino-1-methyl-butylamino)-2,3-diphenyl-pyrido[2,3-b]pyrazine-6-yl]-carbamic acid ethyl ester (*i.e.*, SRI-3072). In Claim 27, this corresponds to $X_1 = N$; $X_2 = CH$; $S_1 = C_2H_5$; $S_2 = NCH(CH_3)(CH_2)_3N(C_2H_5)_2$; S_3 and S_4 forming a heteroaryl with 2 ring substituents (this is now recited in amended Claim 27). The completed structure is shown below.



Claims 27-35 read on this elected species.

For species category J, Applicants elect the Gram positive bacteria. Claims 27-29 and 32-35 read on this elected species.

For species category K, Applicants elect the bacterium *M. tuberculosis*. Claims 27-29 and 32-35 read on this elected species.

For species category L, Applicants elect the species polymyxin B. Claims 27-35 read on this elected species.

Since Applicant elected Group III, species elections for Groups I, II, and IV are not believed to be needed. Applicant notes, however, that the same species elections above correspond to the elections requested for Groups I, II, and IV. Thus, for the sake of completeness, Applicant makes the same species elections for these Groups as above. These species elections are made without traverse.

No fees are believed to be due; however, the Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,
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/Christopher L. Curfman/

May 20, 2008

Christopher L. Curfman

Date